

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

PATTIE BUSBY,

Plaintiff,

:

Case No. 3:14-cv-410

District Judge Thomas M. Rose

Magistrate Judge Michael R. Merz

- vs -

BANK OF AMERICA, N.A., et al.,

Defendants.

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**REPORT AND RECOMMENDATIONS ON MOTION FOR RULE 59  
RELIEF**

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This case is before the Court on Plaintiff's Motion for Rule 59 Relief (Doc. No. 51). As a post-judgment motion, it is deemed referred to the Magistrate Judge under 29 U.S.C. § 636(b), requiring a report and recommendations.

Motions under Fed. R. Civ. P. 59 must be filed "no later than 28 days after the entry of judgment." Judgment was entered in this case on June 3, 2015 (Doc. No. 49). The twenty-eighth day after entry of judgment was July 1, 2015, and the instant motion was not filed until July 2, 2015. It should therefore be stricken as untimely.

Anticipating a possible argument by Plaintiff that she is entitled to an additional three days under Fed. R. Civ. P. 6(d) because the judgment was sent to her by mail, the Magistrate Judge notes that Rule 6(d) applies only to documents served on opposing counsel and not to

documents that must be filed in court. Wright, Miller & Steinman, Federal Practice and Procedure: Civil § 1171, citing *McCarty v. Astrue*, 528 F. 3d 541 (7<sup>th</sup> Cir. 2008); *Albright v. Virtue*, 273 F.3d 564 (3<sup>rd</sup> Cir. 2001).

July 3, 2015.

s/ ***Michael R. Merz***  
United States Magistrate Judge

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).